Supreme Court, U. S.
FILED
AUG 20 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

DOCKET NO.: **75-175**

JOHN IKE GRIFFITH

Petitioner-Appellant

vs.

UNITED STATES OF AMERICA,

Respondent-Appellee

APPENDIX

John Ike Griffith, pro se

Address:

Box 147, Route 1,
Dutton, Alabama 35744.

APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION
* * * * * * * * * *

UNITED STATES OF AMERICA

VS. NO. CR 70 282

JOHN IKE GRIFFITH
FRENCH O. WHITTEN, JR.
ANN LOVE
SHIRLEY BOWMAN

INDICTMENT

COUNT ONE: (18 USC 371) Charged conspiracy to use the mails to defraud, and set out facts at great length.....too extensive to set out in full here....

Excerpts from COUNT ONE, paragraph 3 is quoted as follows:

". 3. Prior to the 21st day of August, 1965, and continuing to the day of the return of this indictment the defendants named hereinabove devised and intended to devise a scheme and artiface to defraud . . . . .etc."

Excerpts from COUNT TWO: 18USC 1341, paragraph one is quoted as follows:

Quote: " 1. Prior to the 21st day of August, 1965, and continuing to the day of the return of this indictment, the defendant, John Ike Griffith and Shirley Bowman devised and intended to devise a scheme and artifice to defraud in this: - - - - - - - "

BEST COPY AVAILABLE

A1.

Excerpts from COUNT THREE: (18 USC 1341) paragraph one is quoted as follows:

Quote: "1. Prior to the 21st day of Aug., 1965, and continuing to the day of the return of this indictment the defendants John Ike Griffith and Shirley Bowman devised and intended to devise a scheme and artifice to defraud in this. . . . ."

Excerpts from COUNT FOUR : (18 USC 1341) paragraph one is quoted as follows:

Quote: "1. Prior to the 21st day of August, 1965, and continuing to the day of the return of this indictment, the defendants, John Ike Griffith and Shirley Bowman, devised and intended to devise a scheme and artifice to defraud in this: . . . . . ." end quote.

Excerpts from COUNT FIVE: (18 USC 1341) paragraph one is quoted as follows:

Quote: " Prior to the 21st day of Aug., 1965, and continuing .....etc."end quote.

Excerpts from COUNT SIX: (18 USC 1341) paragraph one is quoted as follows:

Quote: "1. Prior to the 21st day of August, 1965, and continuing to the day of the return of this indictment ....." end quote.

APPENDIX A2

REPORT OF MAGISTRATE

COURT ORDERS APPEALED FROM

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA __--Sou. Div.

JOHN IKE GRIFFITH

No. CA 74-A-635-S

VS.

UNITED STATES OF AMERICA

EXAMINATION,REPORT AND RECOMMENDATION TO THE UNITED STATES DISTRICT COURT

Movant was convicted in this Court on April 16, 1971, on one count of violation of Title 18, U.S.C. # 371, conspiracy to use the United States mails to defraud and on five specific counts of violation of Title 18,U. S. C. # 1341, use of the United States mails to defraud. He was subsequently sentenced to imprisonment for a period of five years and fined $10.000 under Count One of the indictment and was sentenced to five years imprisonment under each of Counts Two and Three, said sentence to run concurrently with the sentence under Count one; three years probation under each of Counts Four, Five and Six. such three year periods of probation to be served concurrently and to begin upon his release from custody. He was also taxed with the cost in the case

amounting to some $5,226.16. In due course, his appeal was perfected to the United States Court of Appeals for the Fifth Circuit which affirmed on January 20, 1972. U. S. vs. Griffith, 453 F. 2nd 1207, 5th Cir. (1972), Cert. Den. 92 S. Ct. 2059, 406 U. S. 957. On June 26 1974, he filed his motion in this Court pursuant to Title 28, U.S.C. # 2255 and included therewith a forty-two page document which he has entitled

"Memorandum of Law in Support of: Motion to Vacate Sentence. Grant a New Trial or Discharge Petitioner from Custody Pursuant to Section 2255, Title 28, U. S. C." Upon careful study , it is found that this additional document contains certain allegations which Movant apparently wishes the Court to consider in support of his motion. Contemporaneously with the above, he has filed three motions, the thrust of which appear to be that any United States district judge to whom his motion might be assigned and who is also a present or past member of the Birmingham Bar Association or the Alabama bar Association, should disqualify himself from these proceedings on the ground that as a member, past or present, of either the Birmingham or the Alabama Bar Associations, he has such a personal interest in the outcome of these proceedings as to make it unfair to the Movant for such Judge to sit. The Magistrate will consider all the above motions and the memorandum as one integrated request for post-conviction relief and will treat them as such herein.

Movant asserts that he has previously filed a motion under Section 2255 in United States District Court for the Northern District of Texas. which said motion was denied. The Magistrate is uninformed of the grounds alleged in the previous motion. However, since the statute requires that such a motion be filed in the court which imposed the sentence . the Magistrate will consider

that the motion was dismissed there as having been brought in the wrong district and not on the merits.

On June 28, 1974, Magistrate R. Macey Taylor, entered an order requiring the respondent to show cause why the relief requested by the Movant should not be granted. The Respondent has filed its answer and Movant has since filed a traverse, Such response and traverse will be considered herein.

(Then he takes five pages to discuss the issues and ends by recommending that the relief requested by the Movant should be denied.)

DATED, this 7th day of November, 1974.

Edwin L. Nelson

EDWIN L. NELSON-U. S. MAGISTRATE

- - - - - - - - - - -

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

JOHN IKE GRIFFITH

VS. No. CA 74-A-635-S

UNITED STATES OF AMERICA

ORDER

The Court has considered the motion by John Ike Griffith pursuant to28 U.S.C. # 2255 and the report and recommendation of the United States Magistrate. The Magistrate's recommendation is hereby ADOPTED and APPROVED.

It is therefore ORDERED that the motion of John Ike Griffith to vacate and set aside the conviction in criminal action 70-282-S be and the same hereby is DENIED.

The Clerk is directed to furnish Movant, in care of Box 147, Route 1, Dutton, Alabama and the United States Attorney, Northern District of Alabama with a copy of the Magistrate's report and recommendations and this order.

DONE, this 7th day of November, 1974.

C. W. ALLGOOD

UNITED STATES DISTRICT JUDGE

Filed in Clerk's
Office,
Northern District of Ala.
Nov. 8, 1974

William E. Davis
Clerk, U. S. District Court

IN THE UNITED STATES COURT OF APPEALS FOR

THE FIFTH CIRCUIT

No. 74-4012

DO NOT PUBLISH

Appeal from the United States District Court = - Northern District of Alabama

---

March 25, 1975

Before BELL, WISDOM AND CLARK, Circuit Judges

PER CURIAM: AFFIRMED. See Local Rule 21 1/ 2/

APPLICATION FOR REHEARING WAS DENIED ON JUNE 3, 1975.

---

* Rule 18, 5 Cir.; See Isabell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F. 2nd 409.

1/ See N. L. R. B v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F. 2nd 906.

2/ The petitioner cited as error: (1) Ineffective assistance of counsel; (2) Prejudicial pre-indictment delay; (3) Introduction of evidence obtained by illegal search; (4) Disparity in sentencing of co-

defendants; (5) Introduction of "colored" testimony by witnesses under threat of indictment or more severe punishment; (6) Illegal surveillance; (7) Use of mails only incidental to alleged scheme to defraud; (8) Improper denial of motions to recuse judges on grounds of their membership in the Birmingham and Alabama Bar Associations.

- -

MOTIONS BY PETITIONER WHICH IS BELIEVED TO BE ERRONEOUSLY OVERRULED BY THE U. S. DISTRICT COURT, AND AFFIRMED BY FIFTH CIRCUIT COURT OF APPEALS

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

JOHN IKE GRIFFITH

VS. No. CA 74-A-635-S

UNITED STATES OF AMERICA

MOTION REQUESTING ORAL EVIDENTIARY HEARING ON PETITIONER S SECTION 2255 MOTION, AND ON MOTION REQUESTING BIRMINGHAM and/or ALABAMA U. S. DISTRICT JUDGES TO RECUSE THEMSELVES

Comes now your Petitioner in the above styled cause, John Ike Griffith, and respectfully moves this Honorable Court to enter an order or decree setting down for oral hearing the Motions filed by Petitioner under Section 2255 of the U. S. Code; and the Motion Requesting U. S. District Judges who are members of the Birmingham and/or Alabama Bar Associations to recuse them-

selves from sitting on, or ruling on, or passing judgment on the merits of the law and/or facts in the above styled cause, and as grounds for this Motion Requesting Oral Evidentiary Hearing sets down and assigns the following separate and several grounds separately and severally:

1. That your Petitioner desires to give oral testimony in support of the matters and things set forth in the pleadings of his Section 2255 Motion which he believes is pertinent and relative to the ends of justice in the premises.

2. The Petitioner desires to summons witnesses other than himself to prove the allegations stated in the above mentioned motions.

3. That the ends of justice will require an oral evidentiary hearing on the merits.

John Ike Griffith

John Ike Griffith, pro se
Box 147, Route 1,
Dutton, Alabama 35744.

* * * * * * * * *

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

JOHN IKE GRIFFITH,

VS. No. CA 74-A-635-S

UNITED STATES OF AMERICA

MOTION REQUESTING THE HONORABLE CLARENCE W. ALLGOOD, UNITED STATES DISTRICT JUDGE TO RECUSE HIMSELF FROM HEARING PETITIONER'S SECTION 2255 MOTION

Comes now the Petitioner in the above styled cause, John Ike Griffith, and moves this Honorable Court to enter an order or decree removing the Honorable Clarence W. Allgood, U. S. District Judge from hearing the Section 2255 Motion of the Petitioner, and as grounds for this motion sets down and assigns the following separate and several grounds separately and severally:

1. That Clarence W. Allgood, the Honorable U. S. District Judge presided at the trial of your Petitioner in case number CR-70-282-S, the United States of America vs. John Ike Griffith, and it became evident from the transcript of the testimony that that case was a Birmingham and Alabama Bar Association prosecution, and Petitioner verily believes that the Honorable Clarence W. Allgood is a member of the Alabama and Birmingham Bar Associations and did have such interest in the outcome of the case to secure a conviction of your Petitioner that he is disqualified to hear Petitioner's Section 2255 Motion on account of his biase and prejudice.

2. That the Honorable Clarence W. Allgood clearly indicated his biase and prejudice in the case by remarking in open court at

the time Petitioner was sentenced in case number CR-70-282-S to the effect: "I read a letter last night" indicating that he based his decision to give the defendant Petitioner the maximum sentence based on his prejudice and biase in a letter after the trial had closed, and not on the evidence produced before the jury, and reported in the transcript of evidence.

3. That it appears to be necessary to subpoenia the Honorable Clarence W. Allgood as a witness in an evidentiary oral hearing on Petitioner's Section 2255 motion to have him testify further relative to the "letter which he read last night" on the night before he sentenced your Petitioner in case No. CR-70-282-S United States of America vs. John Ike Griffith, and which said letter he read after the case was closed the day before--and which letter obviously was read outside of the court room or the court proceedings in the case--and which obviously prejudiced and biased the Judge. And, it would appear to be improper for the Honorable Clarence W. Allgood to appear in the Section 2255 Motion oral hearing both as a judge and as a witness at the same time.

John Ike Griffith

John Ike Griffith, pro se
Box 147, Route 1,
Dutton, Alabama 35744.

State of Alabama, Jackson County)

Before me the undersigned authority in and for said county, in said state, personally appeared John Ike Griffith, and by me first duly sworn, he subscribed to the above, and does state that the information, facts, and allegations herein above stated are true and correct to the best of his knowledge and belief.

John Ike Griffith

Sworn to and subscribed this the __day of ____, 19___.

SEAL ____ Notary Public.

Signature of Notary on original copy.

* * * * * * * * * *

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ALABAMA

John Ike Griffith

vs. No. CA 74 A 635

United States of America

MOTION REQUESTING BIRMINGHAM AND ALABAMA U. S. DISTRICT JUDGES TO RECUSE THEMSELVES

Comes now the Petitioner in the above styled cause, John Ike Griffith, and respectfully moves this Honorable court to enter an order or decree removing and disqualifying all United States Judges who are at the present time, and whom have been members of the Birmingham and/or Alabama

Bar Associations from sitting on, or ruling on, or passing judgment on the merits of law and fact in the above styled cause, and as grounds for this motion sets down and assigns the following separate and several grounds separately and severally:

1. The transcript of the evidence presented at the trial in case no. CR-70-282-S entitled United States vs. John Ike Griffith , along with sworn affidavits of the members of the Alabama and Birmingham Bar Associations in their application for search warrant of your Petitioner's office shows conclusively that the proceedings in case number CR-70-282-S was a bar association prosecution instituted by and prosecuted by the Birmingham and Alabama Bar Associations, and that the said judges being members of the said Alabama Bar Association, and the Birmingham Bar Association would be prejudiced and biased and disqualified by virtue of their said membership to hear fairly and impartially the merits of your Petitioner's Section 2255 Motion for a redetermination of the merits of the case in case No. CR-70-282-S, U. S. of America vs. John Ike Griffith.

John Ike Griffith

Address of the Petitioner: John Ike Griffith, pro se
Box 147, Route 1,
Dutton, Alabama 35744.

CONSTITUTION, STATUTES AND RULES INVOLVED

I

Constitution of the United States
AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon reasonable cause, supported by oath or affirmation, and particularly describedg the place to be searched, and the person or things to be seized.

Constitution of the United States
Amendments ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, WITHOUT DUE PROCESS OF LAW; nor shall private property be taken for public use, without just compensation.

Constitution of the United States
Amendments ARTICLE VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Constitution of the United States
Amendments ARTICLE XIV

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, WITHOUT DUE PROCESS OF LAW: nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28, Section 1257 (3), United States Code

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or

where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

5. Title 34,Section 27, Code of Alabama, 1940

For abandonment, twelve months' residence to be proved.

No bill can be filed for a divorce on the ground of voluntary abandonment, unless the party applying therefor, whether husband or wife, has been a bona fide resident citizen of this state for twelve months next preceding the filing of the bill which must be alleged in the bill and proved **PROVIDED HOWEVER, THE PROVISIONS OF THIS SECTION SHALL NOT BE OF FORCE AND EFFECT WHEN THE COURT HAS JURISDICTION OF BOTH PARTIES TO THE CAUSE OF ACTION.**

6. Title 34, Section 29, Code of Ala.,1940

If defendant a non resident, a year's residence by plaintiff must be proved.

When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for one year next before the filing of the bill which must be alleged in the bill and proved; **PROVIDED HOWEVER, THE PROVISIONS OF THIS SECTION SHALL NOT BE OF FORCE AND EFFECT WHEN THE COURT HAS JURISDICTION OF BOTH PARTIES TO THE CAUSE OF ACTION.**

CERTIFICATE OF SERVICE

I certify that I have this the 18 day of August, 1975, served three copies of the foregoing APPENDIX to Petition for Certiorari on the Solicitor General of the United States, Justice Department, Washington, D. C. by depositing the copies of the same in the U. S. Mails, properly addressed to him, with the postage prepaid.

John Ike Griffith

John Ike Griffith